

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES RAWLEY,

Plaintiff,

Case No. 23-cv-00508 JFR/GBW

v.

UNITED STATES OF AMERICA,

Defendant.

ANSWER

Defendant United States of America answers Plaintiff James Rawley's Second Amended Complaint (the "Complaint"), as follows:

I. INTRODUCTION

The paragraphs included in the "Introduction" Section of the Complaint are not allegations to which the United States can or must respond. To the extent a response is required, the United States denies any allegations contained in those paragraphs.

II. ALLEGATIONS

1. The United States does not have sufficient knowledge or information to admit or deny the allegations in paragraph 1 of the Complaint and, therefore, denies them.

2. In response to the allegations in paragraph 2 of the Complaint, the United States admits that it is the only proper defendant for Plaintiff's claims. The United States denies the remaining allegations in paragraph 2.

3. The United States denies the allegations in paragraph 3 of the Complaint.

4. The United States is without sufficient knowledge or information to admit or deny

the allegations in paragraph 4 of the Complaint and, therefore, denies them.

5. The United States is without sufficient knowledge or information to admit or deny the allegations in paragraph 5 of the Complaint and, therefore, denies them.

6. The allegations in paragraph 6 of the Complaint are legal conclusions which do not require a response from the United States. To the extent a response is required, the United States is without sufficient knowledge or information to admit or deny the allegations in paragraph 6 and, therefore, denies them.

III. RELIEF SOUGHT

7. The United States is without sufficient knowledge or information to admit or deny the allegations in paragraph 7 of the Complaint and, therefore, denies them.

8. The United States denies that Plaintiff is entitled to any relief as against the United States, including, but not limited to, any relief sought in the Complaint and any relief included in paragraph 7 of the Complaint.

9. The United States denies each and every allegation contained in the Complaint that has not been specifically admitted herein.

DEFENSES

1. Plaintiff fails to state a claim upon which relief can be granted.

2. The Court lacks subject-matter jurisdiction over any claim not administratively exhausted by Plaintiff prior to filing suit. 28 U.S.C. § 2675(a).

3. Plaintiff's claim for damages is limited to damages recoverable under 28 U.S.C. § 2674 and New Mexico law.

4. Any damages in this case are limited to the amount set forth in Plaintiff's administrative claim. 28 U.S.C. § 2675(b).

5. Defendant's liability for damages, if any, is reduced according to New Mexico law on comparative fault. NMSA 1978, § 41-3A-1.

6. Plaintiff's injuries and/or damages, if any, were not proximately caused by a negligent act or omission of any employee of the United States acting within the scope and course of employment.

7. Plaintiff failed to mitigate his damages.

8. Neither the United States, nor any employee of the United States, owed any duty to Plaintiff, thus depriving the Court of subject-matter jurisdiction.

9. The United States asserts that it has, or may have, additional defenses (including affirmative defenses) which are not known at this time, but which may be ascertained through discovery. The United States preserves these and other affirmative or other defenses as they are ascertained through discovery.

WHEREFORE, having fully answered the Complaint, the United States respectfully requests that the Complaint be dismissed with prejudice, that judgment be entered in favor of the United States, and any other and further relief deemed appropriate.

Respectfully submitted,

ALEXANDER M.M. UBALLEZ
United States Attorney

/s/ Jesse Hale 1/5/24
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 5, 2024, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Jesse Hale 1/5/24
JESSE HALE
Assistant U.S. Attorney